

**Letter of Findings Number: 01-20120405P  
Individual Income Tax – Late Filing Penalty  
For the Period 2001**

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**ISSUE**

**I. Tax Administration – Late Filing Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayers protest the imposition of the late filing penalty.

**STATEMENT OF FACTS**

Taxpayers, who file a joint income tax return, were assessed a penalty for late payment of 2001 individual income tax. Taxpayers protested the penalty. An administrative hearing was held by telephone. This Letter of Findings results. Additional information will be provided as needed.

**I. Tax Administration – Late Filing Penalty.**

**DISCUSSION**

Taxpayers protest the imposition of a penalty for late payment of income tax.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC § 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayers filed their 2001 income tax return, and made the payment for tax due, more than three months after its April 2002 due date. During the hearing, the Department requested that Taxpayer provide documents or other materials to support Taxpayer's protest. Taxpayers did not provide an explanation, or any additional materials to counter the Department's determination that it did not receive Taxpayers' payment and return timely.

Taxpayers must demonstrate that they had reasonable cause for not timely remitting their Indiana income tax. In order to establish reasonable cause, Taxpayer must demonstrate that it exercised "ordinary business care and prudence" in conducting the duties from which the additional tax and penalty arose. [45 IAC 15-11-2\(c\)](#). Taxpayers have not submitted information or documents sufficient to demonstrate reasonable cause for not timely remitting their 2001 Indiana income tax.

**FINDING**

Taxpayers' protest is respectfully denied.

*Posted: 03/27/2013 by Legislative Services Agency*  
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